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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 30, 2013

10:05 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(CC: Doc #3374, 3375) STATUS CONFERENCE re Debtors' Motion for Entry of an Order to Permit the Debtors to Continue Using Cash Collateral

(CC: Doc #3189) ADJ. HEARING re First Application for Interim Professional Compensation (First Interim Application of Hudson Cook, LLP as Special Counsel to the Debtors for Compensation and Reimbursement of Expenses Incurred for the Period 5/15/2012 through 12/31/2012) for Hudson Cook LLP, Special Counsel; period: 5/15/2012 to 12/31/2012; fee: \$1,206,481.50; expenses: \$15,463.07

(CC: Doc #1227) ADJOURNED HEARING Regarding Scheduled Creditor's Motion for the Clarification/Enforcement of the Automatic Stay Against The Debtors, Co-Creditor Deutsche Bank Americas and Counsel

(CC: Doc #2935) MOTION to Extend Time for Julio Solano to File Proof of Claim

HEARING Regarding Letter of David and Leslie Kinworthy Requesting Relief from the Automatic Stay

(CC: Doc #2604) MOTION for Relief from Stay

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(CC: Doc #3238) MOTION to File a Late Proof of Claim Filed by
Wenig Firm

ADJ. HEARING re Cure Objections

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BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. We're here
3 in Residential Capital, number 12-12020. Mr. Goren?

4 MR. GOREN: Thank you, Your Honor. Todd Goren,
5 Morrison & Foerster, on behalf of the debtors. The first
6 eleven and a half pages of the agenda or so were all adjourned
7 to a later hearing date. So the first item going forward on
8 the agenda is on page 12. And that is the status conference on
9 the debtors' motion for a nonconsensual use of cash collateral.

10 THE COURT: Yeah.

11 MR. GOREN: The debtors filed that motion in early
12 April seeking nonconsensual use of cash collateral solely to
13 pay for those costs that the debtors believe are necessary to
14 preserve and monetize the lenders' remaining collateral.

15 One objection has been filed to date by UMB Bank,
16 which is trustee for the junior secured bonds, in which they
17 sought payment of the trustee's fees and expenses. We've been
18 able to resolve that objection by agreeing to pay UMB's only
19 fees. We will include that in the order. We didn't agree to
20 pay any UMB's professional fees but we will pay the trustee's
21 fees.

22 Citi also filed a response clarifying that they still
23 believe they're owed a default rate interest because we made a
24 statement in the motion that we paid Citi off in full. That's
25 not really an issue for this specific hearing. They just

1 wanted to get that out there on the record. That will be dealt
2 with at some point in the future as necessary.

3 The motion was originally scheduled to be heard today
4 but in order to accommodate discovery requests by the junior
5 secured bonds, we consensually agreed to move it out to the
6 14th of May. Your Honor entered an order on the -- I believe
7 it was Friday with the scheduling order and the extension of
8 cash collateral to that time.

9 Absent a consensual resolution, my understanding is
10 that the junior secured bonds will object to the motion. My
11 understanding of their position is that they will argue that
12 because of the debtors' prior 506(c) waiver in the previous
13 cash collateral order and the substantial unencumbered cash
14 held by the debtors that we will -- are required to use that
15 cash to monetize and preserve their collateral for the purposes
16 we were seeking to use it in the motion rather than using their
17 cash collateral for that purpose.

18 We're continuing to negotiate with them. I'm hopeful
19 we'll be able to reach a consensual resolution but, if not, the
20 parties are proceeding.

21 THE COURT: Anybody want to be heard for the junior
22 secured noteholders?

23 MR. SHORE: Good morning, Your Honor. Chris Shore
24 from White & Case on behalf of the ad hoc group of junior
25 secured notes. We are proceeding, as Mr. Goren said, in both a

1 consensual and nonconsensual path. The FAs have been talking
2 back and forth to try to come up with an agreed upon number
3 that everybody believes is reasonable for the monetization of
4 remaining collateral that is not cash yet. We're hopeful we
5 can get there.

6 To the extent we can't get there, we served document
7 requests and a deposition -- or deposition notices on the
8 debtors. They provided us some documents. We're trying to
9 figure out whether the production is complete at this point.
10 We had scheduled two depositions. One is going to be completed
11 this week. One has been adjourned. It's in the DA due to a
12 witness availability. We're trying to figure out what's going
13 to happen with that, whether they're going to provide us a
14 different witness or what not. If we have to come back to the
15 Court, we'll come back to the Court. But hopefully, we can
16 work through that.

17 We've also served discovery on the committee. They
18 have taken the position that they're not going to respond at
19 this point. We had a meet and confer. We're going to try to
20 do that this afternoon again. If there are any issues with
21 that, we'll come back to the Court but hopefully there won't be
22 any.

23 So we're just proceeding on a path towards consensus.
24 If we can't get there then we'll file an objection and we'll be
25 before the Court.

1 THE COURT: Okay. Thank you. Anybody else want to be
2 heard? Committee want to be heard on this? Mr. Zide?

3 MR. ZIDE: Stephen Zide from Kramer Levin on behalf of
4 the committee. The committee's view is that this motion should
5 be largely noncontroversial. Ninety-five percent of these
6 assets of the non-cash assets of the debtors' estates are
7 encumbered by the AFI revolver and the LOC. That's putting
8 aside everything challenged. These assets need to be
9 liquidated and the debtors' proposed use of cash collateral is
10 limited in purpose only to preserving and maximizing the value
11 of these assets.

12 The UCC is largely supportive of the relief although
13 we do have some issues with the proposed order and we intend to
14 articulate those when we file our papers on the objection
15 deadline.

16 As Mr. Shore noted, we've also been served with
17 discovery. We don't think discovery of the committee is
18 appropriate. We have a meet and confer this afternoon. And if
19 there are issues that develop with that, we will come back to
20 the Court.

21 THE COURT: Okay. My only concern is I don't want to
22 get caught short. If there's going to be a contested hearing,
23 I want to know. Do we have any dates between now and May 14th,
24 Mr. Goren?

25 MR. GOREN: Your Honor, we have the May 7th hearing

1 date on exclusivity and the UCC's STN motion. The objections
2 are due on the 6th.

3 THE COURT: Okay.

4 MR. GOREN: So I'm hopeful by that time we'll have a
5 pretty good sense of whether we're proceeding. And if we think
6 we're going to need an evidentiary hearing such that we
7 couldn't use May 14th then we would have to push it out. So
8 we'll aim to try to let you know at the hearing on the 7th --

9 THE COURT: Okay.

10 MR. GOREN: -- where things stand.

11 THE COURT: Well, let's discuss it on the 7th and see
12 where we are. Okay? Thanks very much.

13 MR. GOREN: Thank you, Your Honor. I believe the next
14 item on the agenda is the interim fee application for Hudson
15 Cook.

16 THE COURT: Sure.

17 MR. GOREN: And I think someone from Hudson Cook is on
18 the phone.

19 THE COURT: All right.

20 MR. CLARKE: Yes. Dana Clarke from Hudson Cook.

21 THE COURT: Yes. Go ahead.

22 MR. CLARKE: Right. So I believe that Michael
23 Driscoll of the U.S. trustee's office resolved the objections
24 to the interim fee application. And so the resolution for a
25 portion of the expenses and a resolution of a portion of the

1 objected fees -- and Michael Driscoll has, I believe, the final
2 numbers on how they resolved that.

3 THE COURT: Mr. Masumoto from the U.S. trustee's
4 office is here. I'll let him speak to it. So what we're
5 talking about is the first interim fee application. And it
6 covers the period May 15th, 2012 through December 31, 2012. Go
7 ahead, Mr. Masumoto.

8 MR. MASUMOTO: Thank you, Your Honor. Your Honor,
9 that's correct. We did reach a settlement. And the figures
10 are, with respect to the fees, there was a reduction of 2,766
11 dollars. And with respect to expenses, there was a reduction
12 of \$320.97.

13 We did reach an agreement with Hudson Cook that in
14 future applications they will arrange their time records in
15 project categories as opposed to the chronological order in
16 their first interim.

17 THE COURT: Anybody else wish to be heard with respect
18 to this issue? I'm just checking my notes to see whether I
19 have separate issues to raise.

20 (Pause)

21 THE COURT: All right. I'm going to go ahead and
22 approve the Hudson Cook first interim fee application with the
23 adjustments agreed upon with the Office of the United States
24 Trustee.

25 MR. MASUMOTO: Thank you, Your Honor.

1 THE COURT: Thank you very much, Mr. Masumoto. Thank
2 you very much, counsel.

3 MR. CLARKE: Thank you.

4 UNIDENTIFIED SPEAKER: Your Honor, may we be excused?

5 THE COURT: Yeah, certainly. Anybody else who wants
6 to be excused certainly can at this point.

7 MR. NEWTON: Your Honor, James Newton, Morrison &
8 Foerster, on behalf of the debtors. The next item on the
9 agenda is the motion of Shane Haffey for clarification of the
10 automatic stay. This is at docket number 1227.

11 I don't know that I heard Mr. Haffey's counsel on the
12 phone but it's their motion so I'll turn it over to them if
13 they're on the phone.

14 THE COURT: All right. Is anyone on the phone for Mr.
15 Haffey? All right. No appearance. Just bear with me a
16 second, Mr. Newton.

17 Go ahead, Mr. Newton, because, as I understand it, the
18 debtors agreed to a partial lifting of the stay to permit
19 appeals to go forward. Why don't you go ahead and explain?

20 MR. NEWTON: Sure, Your Honor. You know, we've
21 actually given, or suggested, to Mr. Haffey a couple of
22 options. As we set forth in our opposition, there are six
23 actions related to this property.

24 THE COURT: Yeah. There's no shortage of actions.

25 MR. NEWTON: Four of them do not involve debtors and

1 therefore we don't believe that the --

2 THE COURT: Right.

3 MR. NEWTON: -- stay has any implication. The
4 remaining two involved an action by Mr. Haffey directly against
5 debtors. And that action for 2 is the GMAC -- the Haffey GMAC
6 action we believe would be stayed. In addition, the
7 foreclosure action that's pending with respect to this property
8 was brought in the name of Deutsche Bank but there were cross-
9 claims against debtors. And so, those cross-claims, as well,
10 we believe will be stayed.

11 THE COURT: But the Haffey GMAC action -- the appeal
12 is pending in the Sixth Circuit, correct?

13 MR. NEWTON: Correct.

14 THE COURT: And also with what you refer to as the
15 foreclosure action, there's an appeal pending in the Sixth
16 Circuit with respect to that.

17 MR. NEWTON: Correct. In fact, all of -- the only
18 thing that's remaining is appeals in the Sixth Circuit.

19 THE COURT: Okay. Mr. Haffey's lost everything and
20 there are appeals in the Sixth Circuit.

21 MR. NEWTON: That's correct, Your Honor.

22 THE COURT: Okay. And the debtor is willing to agree
23 to lift the stay for the purposes of allowing the appeals to be
24 resolved.

25 MR. NEWTON: Correct.

1 THE COURT: I will profess not to fully understand
2 what relief Mr. Haffey was seeking. In any event, I have
3 reviewed the papers and the Court will grant the motion in
4 part, deny the motion in part, permit the two appeals in which
5 any of the debtors are parties -- appeals pending in the Sixth
6 Circuit to proceed. So if you would prepare a form of order to
7 accomplish that, I would appreciate it.

8 MR. NEWTON: All right.

9 THE COURT: Okay?

10 MR. NEWTON: Thank you, Your Honor.

11 THE COURT: Thank you very much, Mr. Newton.

12 MR. NEWTON: I'll turn the podium over to Samantha
13 Martin.

14 THE COURT: Sure.

15 MS. MARTIN: Good morning, Your Honor. The next item
16 on the agenda --

17 THE COURT: You have to make your appearance.

18 MS. MARTIN: Oh, sorry. Samantha Martin from Morrison
19 & Foerster on behalf of the debtors.

20 The next item on the agenda is the motion for stay
21 relief filed by Mr. and Mrs. Kinworthy. This is docket number
22 2660. I believe their counsel, Mr. Dzialo, is on the phone.

23 I would just like to note, Your Honor, that the
24 parties have been negotiating a settlement of the state action
25 and we're coming close, I believe, to reaching a settlement.

1 And otherwise, as you've seen in our papers, the debtors do not
2 object to limited stay relief solely for the purposes of
3 permitting the Kinworthys to pursue their claims for monetary
4 relief in the state court action so that they can liquidate
5 their claims in the case that we're --

6 THE COURT: All right. The case -- the state court
7 case is close to trial, is that right?

8 MS. MARTIN: Yes, Your Honor.

9 THE COURT: Okay. All right. I'll hear from the
10 Kinworthys' counsel.

11 MR. DZIALO: Yes, Your Honor. This is John Dzialo on
12 behalf of the plaintiffs.

13 THE COURT: Just say your last name again.

14 MR. DZIALO: Dzialo, spelled D-Z-I-A-L-O.

15 THE COURT: Okay. Go ahead.

16 MR. DZIALO: The plaintiffs in this action are just
17 wishing to get a final figure on this so we can submit a claim
18 in the bankruptcy. We are close to a settlement but I think by
19 a partial lifting of the stay allowing this to proceed to trial
20 should be the impetus that we need to get it finally settled.

21 THE COURT: When is the trial scheduled for?

22 MR. DZIALO: We don't have a date at the present time,
23 Your Honor, because all of the case management conferences that
24 we've appeared at, the Court just kicks this back because of
25 the bankruptcy stay.

1 THE COURT: Okay. So this is in Riverside County
2 Superior Court, is that correct?

3 MS. MARTIN: Yes.

4 MR. DZIALO: That is correct.

5 THE COURT: All right. So I take it then you and the
6 debtors' counsel are in agreement on the form of order that
7 should be entered to lift the stay to permit the action to
8 proceed if necessary, hopefully not necessary, but if necessary
9 to fix the amount of your claim, is that correct?

10 MR. DZIALO: That is correct, Your Honor.

11 THE COURT: That's fine. I'll grant the motion to
12 that extent. Have you worked out a form of order with counsel?

13 MS. MARTIN: We submitted one with our response. So
14 if Mr. Dzialo has no issues with it then --

15 THE COURT: Mr. Dzialo, are you satisfied with the
16 form of order that was submitted with the debtors' response?

17 MR. DZIALO: Yes, Your Honor, I am.

18 THE COURT: Okay. All right. Then that'll be
19 entered. Thank you very much.

20 MS. MARTIN: Thank you.

21 MR. DZIALO: Thank you.

22 THE COURT: All right.

23 MS. MARTIN: And I believe with that, that was our
24 last matter for the -- oh. There's one more. Sorry.
25 Apologies. Mr. Rosenbaum.

1 MR. ROSENBAUM: Good morning, Your Honor. Norm
2 Rosenbaum for the debtors -- Morrison & Foerster.

3 Your Honor, the next matter on the agenda is the
4 motion for permission to extend the deadline for Julio Solano
5 to file a proof of claim. It's docket number 2935. I believe
6 Mr. Sax, counsel for Mr. Solano, has made a telephonic
7 appearance.

8 Your Honor, I just want to advise you that this matter
9 has been adjourned. Both the motion to file a late proof of
10 claim and the underlying motion for relief from the stay have
11 been adjourned several times. We reached out on several
12 occasions to see if a consensual resolution could be reached
13 for Mr. Solano in this matter for several weeks. And after
14 several attempts, last night, we finally saw some e-mails from
15 Mr. Sax suggesting that he would be amenable to engaging in
16 discussions to see if there was a resolution for this. We
17 would be prepared to do so provided Mr. Sax responds to any
18 offers we make in a very timely basis with authority from his
19 client and that all the matters currently pending before the
20 Court including the motion for relief, the motion to file the
21 late proof of claim and the underlying -- and the adversary
22 that was commenced on behalf of Mr. Solano will be stayed
23 pending those negotiations. We would agree to adjourn this
24 matter to June 12th.

25 THE COURT: All right. Mr. Sax, you want to be heard?

1 MR. SAX: Thank you, Your Honor. I would like to
2 adjourn those matters to discuss these possibilities with
3 counsel. There have been some events in Mr. Solano's life just
4 in the last few days that changes our perspective about this
5 matter. So --

6 THE COURT: All right. I'm going to adjourn the
7 matters until June 12th. It's very important, Mr. Sax, that
8 you communicate promptly with Mr. Rosenbaum or his colleagues
9 and see whether you can reach a resolution to this.

10 As I understand it, your state court action against
11 GMAC Mortgage was filed on June 7th, 2011. I think I followed
12 the saga of the Solano's attempt to pay the amount that was due
13 and checks returned, et cetera. I won't go through that whole
14 narrative. And I understand that, as you know, the bar date in
15 this case was November 9th, 2012. You filed the late proof of
16 claim on January 10th, 2013. So I understand the basic
17 background.

18 We'll adjourn this, as I say, till June 12th. You
19 ought to really try your best to see if you can reach a
20 resolution before then. Okay?

21 MR. SAX: We will, Your Honor. Is it possible this
22 could be held on June 5th as I am in a jury trial on June 12th?

23 THE COURT: No. The problem, Mr. Sax -- and I
24 appreciate that. What time do you start trial?

25 MR. SAX: It would be 11:30 your time. So --

1 THE COURT: Well, we can -- we'll put you on first on
2 the calendar. You can participate by telephone. The problem
3 is I do omnibus hearing days in --

4 MR. SAX: No, no, no. That's fine.

5 THE COURT: And so we'll take you first. You can do
6 it by phone. You can do it from the phone at the courthouse or
7 your office whichever is more convenient.

8 MR. SAX: Your Honor, that will be fine.

9 THE COURT: Okay. Thank you very much, Mr. Sax.

10 MR. ROSENBAUM: Your Honor, just one other --

11 THE COURT: Go ahead, Mr. Rosenbaum.

12 MR. ROSENBAUM: -- clarifying point. The Solano
13 adversary proceeding is subject to the adversary proceeding
14 procedures.

15 THE COURT: Right.

16 MR. ROSENBAUM: And we'd just like to put those in
17 abeyance.

18 THE COURT: All right. The Court agrees to hold in
19 abeyance the case management procedures as applied to the
20 Solano adversary proceeding till we can -- we'll revisit that
21 on June 12th. Okay?

22 MR. ROSENBAUM: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. SAX: Thank you, Your Honor.

25 THE COURT: Thank you very much, Mr. Sax. Go ahead,

1 Mr. Rosenbaum.

2 MR. ROSENBAUM: Your Honor, the next matter on is
3 number 8. It's at page 22 of the agenda.

4 THE COURT: Just give me a chance to flip through it
5 again. Okay. Go ahead.

6 MR. ROSENBAUM: This is the motion for order
7 permitting MED&G Group LP to file a proof of claim. It's
8 docket number 3238.

9 THE COURT: Yes.

10 MR. ROSENBAUM: I will cede the podium to counsel for
11 MED&G.

12 THE COURT: All right.

13 MR. BANEY: Good morning, Your Honor. William Baney
14 of Wenig Saltiel for the movant. Your Honor, Rule 9006(b)(1)
15 as pointed out in both movant's papers and the objection by the
16 debtors is, at bottom, an equitable one. The underlying case,
17 as you may --

18 THE COURT: Your problem is that the Circuit has set a
19 very high bar in Chapter 11 cases for the Court to permit late
20 claims.

21 MR. BANEY: Correct, Your Honor. Movants urge the
22 Court to follow In re Grand Union Company, which is a Delaware
23 circuit court, which stated that when debtors are aware that
24 movant is represented by counsel throughout pre-petition and
25 upwards into filing a petition, that counsel should be served.

1 In this case, the objection by the debtors did not address the
2 issue that counsel is not served in the underlying case in
3 California. All of the service that was objected to -- well,
4 we brought it up in our moving papers that counsel for the
5 movant in the underlying case was not served. And it's our
6 position that counsel should have been served and therefore
7 there was no adequate notice.

8 THE COURT: Were your clients aware -- were your
9 clients or any of their counsel aware of the ResCap bankruptcy
10 before the bar date?

11 MR. BANEY: Yes, Your Honor. They were aware. And
12 also with talking with the underlying motion -- or the
13 underlying actions' counsel, they did receive a notice of
14 pendency or a notice of this case being initiated. And they
15 also received a notice that there would be a bar date. But
16 they never received anything stating what the bar date was.
17 The notice that they received said hold off on filing a proof
18 of claim until further notice and no further notice was given.

19 THE COURT: What notice did they receive telling them
20 to hold off --

21 MR. BANEY: I --

22 THE COURT: Wait. Let me finish my question.

23 MR. BANEY: Sorry.

24 THE COURT: Don't interrupt.

25 MR. BANEY: Sorry.

1 THE COURT: What notice did they receive telling them
2 to hold off on filing a proof of claim?

3 MR. BANEY: Your Honor, I don't have that document. I
4 believe it may have been --

5 THE COURT: This was a notice from the debtor telling
6 somebody not to file a proof of claim? I can't believe it.

7 MR. BANEY: Well, I'm not positive of the wording.
8 This is just from --

9 THE COURT: I mean, maybe their counsel --

10 MR. BANEY: -- conversations with the underlying
11 case's counsel.

12 THE COURT: I mean, look, I want to be clear about
13 this. Are you representing that the debtors' counsel advised
14 your client not to file a proof of claim?

15 MR. BANEY: No, Your Honor. I'm not making that
16 representation. I'm saying what I heard from -- what the
17 impression was on the underlying case's counsel --

18 THE COURT: I really don't want to know about --

19 THE COURT: -- not saying that debtor --

20 THE COURT: I'm really not interested in what
21 impressions the debtors' counsel in the underlying case may
22 have had. If what you're telling me is that through specific
23 words, anybody representing the debtors in the underlying case
24 or in this case advised your client's counsel that they should
25 hold off on filing a proof of claim, I want to know that. But

1 if the counsel in the case came to an erroneous impression that
2 your client should hold off -- I mean, frankly, I hope their
3 malpractice insurance is paid up.

4 MR. BANEY: Your Honor, I don't think that there was
5 any affirmative representation by debtors that -- not to file.
6 I think what happened was there was a pre-bar date order notice
7 given to counsel in the underlying case but there was never
8 anything affirmatively stating what the bar date was.

9 THE COURT: You know, but once -- just bear with me a
10 second.

11 (Pause)

12 THE COURT: Are you familiar with the Second Circuit's
13 decision in In re Medaglia, 52 F.3d 451 --

14 MR. BANEY: No, Your Honor.

15 THE COURT: -- (2nd Cir. 1995)?

16 MR. BANEY: No, Your Honor.

17 THE COURT: Because the Second Circuit in Medaglia
18 held that actual knowledge of a bankruptcy proceeding is
19 adequate substitute for a formal notice of the bar date even
20 where the creditor was not scheduled by the debtor.

21 So the arguments you raise for -- and the Second
22 Circuit has made clear the Pioneer factors created an extremely
23 high bar to a late proof of claim.

24 MR. BANEY: I mean, we --

25 THE COURT: In the circum --

1 MR. BANEY: -- understand that.

2 THE COURT: Just let me finish this thought. I'm
3 sorry. You thought I was done. I understand that.

4 In the circumstance where you acknowledge that your
5 client and its counsel in the state court knew of the
6 bankruptcy case, it's a particularly difficult case to get the
7 Court to somehow apply equitable principles.

8 The other thing -- and this is what I've -- in reading
9 the papers, it's not as if your client and affiliates of your
10 client weren't served. The claims agent's affidavit of service
11 show multiple service of the bar date notice. And I know your
12 client takes the position it didn't receive it. I could
13 understand it if -- I won't say I understand it. The issue
14 would get more complicated -- more difficult for me if there
15 was one single notice and maybe there was an argument it wasn't
16 delivered and we'd get into an evidentiary issue. And there
17 certainly is the mailbox presumption that applies in the Second
18 Circuit. So again, the affidavit of service that it was mailed
19 creates the presumption that it was received in order to
20 overcome the presumption, you've got a burden to overcome.
21 Maybe you could get close to doing it if there was just one bar
22 date notice that was mailed. Here, there were bar date notices
23 mailed to, what, I don't know, MED & Base Group LP at 2900
24 Mendocino Avenue, Suite 101, Santa Rosa, California; Praxis
25 Capital, 2801 T Street, Sacramento 95816. There were multip --

1 it's obvious -- it's in the debtors' papers about the multiple
2 mailings. How is it I'm to -- how do you overcome the mailbox
3 rule here when there are so many notices that were mailed and
4 nothing was done and what you're telling me is your client's
5 counsel in California had the "impression" that they could hold
6 off filing a proof of claim? All right? That's what I'm
7 really struggling with.

8 MR. BANEY: Right. And, Your Honor, we're not denying
9 that service was made. We can't affirmatively say that we did
10 receive it because, talking to our client, there was no record
11 of the bar date notice from any of the places. That being
12 said, it's a really -- like you said, it's a very tough
13 presumption to overcome that service was sufficient.

14 If I may harp back to the Grand Union case, in that
15 case, the judge felt that if it's something that's mailed to
16 someone who doesn't have adequate knowledge that it should be
17 served on counsel. And here, I understand --

18 THE COURT: But your counsel -- are you telling me
19 your counsel didn't -- well, go ahead. I'm sorry. I
20 interrupted you.

21 MR. BANEY: No. My point is just that our argument
22 with the -- I believe it's the T Street where we said it may
23 have been served. We didn't receive it. And that office has
24 very little communi -- not very little but their own inner
25 workings to where they determine if the stuff should go on.

1 And these people are acquisitions only. They don't deal with
2 any litigation. So the fact that they may have received --

3 THE COURT: What about Mendocino Avenue?

4 MR. BANEY: The Mendocino Avenue -- the movant moved
5 from that place over a year ago. All of the companies moved to
6 the 333 --

7 THE COURT: Could I -- let me ask you this. Did your
8 client -- did counsel file a notice of appearance in this case?

9 MR. BANEY: No.

10 THE COURT: All right. They moved from that address
11 when?

12 MR. BANEY: Over a year ago, sometime in 2012.

13 THE COURT: And was the mail forwarded?

14 MR. BANEY: I can't answer that for sure, Your Honor.
15 And that being said, mail forwarding only lasts so long so -- a
16 forwarding address probably would be helpful.

17 THE COURT: All right. Let me hear from the --
18 anything else you want to add?

19 MR. BANEY: No. Can I reserve the right to a
20 rebuttal?

21 THE COURT: Yes.

22 MR. BANEY: Thank you.

23 THE COURT: Certainly. Let me hear from debtors'
24 counsel. Mr. Rosenbaum?

25 MR. ROSENBAUM: Norm Rosenbaum, Morrison & Foerster,

1 for the debtors.

2 Your Honor, we believe there's more than sufficient
3 undisputed evidence that the bar date notice was mailed on at
4 least three valid addresses. I would add that one of them, the
5 333 Mendocino Ave., Suite 110, Santa Rosa, California, which
6 movant, in their own papers, admit is the main address, a bar
7 date notice was served on an entity, Pinnacle Equity Group, at
8 that address. We believe that's an affiliate. Don't have
9 evidence to put into the record on that but we understand that
10 to be an affiliate.

11 Your Honor, we don't believe that the movant has
12 demonstrated excusable neglect here under Pioneer and its
13 progeny. Its their burden and they haven't met it. And as
14 Your Honor noted, the bar date notices were deemed received.
15 We'd cited to Alexander's and similar cases in our papers.

16 Your Honor, I would just note one thing. Movant is
17 not entirely without remedy here. We are prepared -- and
18 there's also a motion for relief from the stay on for the next
19 hearing date. We would be prepared to stipulate to their
20 equitable relief not their monetary relief. So they're not
21 without their ability --

22 THE COURT: So they --

23 MR. ROSENBAUM: -- to protect themselves --

24 THE COURT: They bought a --

25 MR. ROSENBAUM: -- in the underlying action.

1 THE COURT: -- property in foreclosure. The former
2 owner of the property has brought an action to quiet title and
3 set aside the sale, correct?

4 MR. ROSENBAUM: That's correct, Your Honor.

5 THE COURT: And what's the status of that, do you
6 know?

7 MR. BANEY: I can --

8 MR. ROSENBAUM: I'll defer to counsel --

9 THE COURT: Okay.

10 MR. ROSENBAUM: -- but I believe that matter is on for
11 trial in the next few weeks. There is a mandatory mediation in
12 about a week, a week and a half.

13 THE COURT: Okay.

14 MR. ROSENBAUM: But if that's incorrect --

15 MR. BANEY: William Baney, Wenig Saltiel, for the
16 movant.

17 Yeah. There's a -- I think trial scheduled for May
18 30th to go forward. The movant has cross-complaints for
19 equitable relief to quiet title. And the underlying plaintiffs
20 have an action to set aside the trustee's deed. And movant's
21 four causes of action, two of them are equitable for set
22 aside -- or quiet title. And then the other is the monetary
23 relief in the event that the deed is set aside.

24 Also, just to point out something that counsel
25 stated --

1 THE COURT: What do they say the defect on the sale
2 was?

3 MR. BANEY: I'm sorry, Your Honor?

4 THE COURT: Do you know? What do the plaintiffs in
5 the underlying case say the defect in the sale was?

6 MR. ROSENBAUM: The allegations in the complaint are
7 that the plaintiffs attempted to tender the arrears and that
8 was unaccepted. I think that's the really gravamen of their
9 complaint.

10 THE COURT: Okay. All right. The Court's going to
11 rule.

12 Pending before the Court is the motion for order
13 permitting MED&G Group LP to file a late proof of claim. It's
14 ECF docket number 3238 and it's supported by the affidavit of
15 Brian Burke. The debtors filed an objection to the motion and
16 that's at ECF 3508.

17 The Court denies the motion for an order permitting
18 MED&G to file a late proof of claim. MED&G Group LP purchased
19 the property located at 3735 Coffey Lane, Santa Rosa,
20 California from the debtors on or about September 13, 2010.
21 They purchased the premises for \$244,144.84 which was the
22 amount of the unpaid debt outstanding from the underlying
23 mortgage. MED&G recorded the trustee's deed upon sale which
24 displays MED&G's address as P.O. Box 5844 Santa Rosa,
25 California 95402. See the Burke affidavit, paragraph 4. And

1 the trustee's deed is attached as Exhibit A to the motion.

2 On August 29th, 2012, this Court entered its order
3 establishing a deadline for filing proofs of claim and
4 approving the form and manner of notice thereof. That's at ECF
5 1309. It established November 9th, 2012 as the general claims
6 bar date. The Court subsequently entered an order extending
7 deadline for filing proofs of claim. That's at ECF 2093 and
8 extended the bar date to November 16th, 2012.

9 In connection with the action that's pending in
10 Superior Court in the county of Sonoma, the plaintiffs in that
11 case sought relief from this Court, relief from the automatic
12 stay, and the motion was settled by stipulation allowing the
13 Inoues to proceed to trial on August 17th -- the stipulation
14 was approved on August 17th, 2012. It's at ECF 1206.

15 MED&G asserted that it filed a motion for relief from
16 stay on November 27th, 2012. That's at ECF docket 2274. They
17 said they did so without knowledge of the bar date. And they
18 did so to permit the action to proceed to trial in the Inoue
19 action. The motion for relief seeks relief from the automatic
20 stay to pursue claims including monetary damages against GMAC
21 Mortgage.

22 The present motion was filed on March 18th, 2013.

23 The affidavit of service with respect to the bar date
24 notice sets forth the notice was sent to, among others, MED&G
25 Group LP, 3104 O Street, #109, Sacramento, California 95816;

1 MED & Base Group LP, 2900 Mendocino Avenue, Suite 101, Santa
2 Rosa, California; and Praxis Capital, 2801 T Street,
3 Sacramento, California.

4 MED&G complains that the notice was not served upon
5 its counsel in the California action even though they say
6 debtors were well aware that MED&G was represented by counsel
7 in the case.

8 In cases where creditors have failed to file claims
9 before the bar date despite having notice, Bankruptcy Rule
10 9006(b)(1) gives the court the discretion to enlarge the time
11 to file claims where the failure to act was the result of
12 excusable neglect. See In re Lehman Brothers Holdings Inc.,
13 433 B.R. 113 at 119 (Bankr. S.D.N.Y. 2010). The Supreme Court
14 has interpreted excusable neglect to be a flexible standard,
15 one that includes "inadvertence, mistake or carelessness as
16 well as by intervening circumstances beyond the party's
17 control." I'm quoting from the Lehman decision -- Judge Peck's
18 Lehman decision: "However, the determination is, at bottom, an
19 equitable one that must take into account all relevant
20 circumstances surrounding the party's omission." See Pioneer;
21 that's 507 U.S. 380 at page 395 (1993).

22 The Pioneer court established four factors to assist
23 bankruptcy courts in evaluating excusable neglect: (1)the
24 danger of prejudice to the debtor; (2)the length of the delay
25 and its potential impact on judicial proceedings; (3)the reason

1 for the delay including whether it was within the reasonable
2 control of the movant; and (4) whether the movant acted in good
3 faith. See Pioneer, 507 U.S. at 395.

4 "The Second Circuit" -- this is a quote from Lehman:
5 "The Second Circuit strictly observes bar dates and has adopted
6 what has been characterized as a hard line in applying the
7 Pioneer test." Meaning, that this Court should focus its
8 analysis "primarily on the reason for the delay and
9 specifically whether the delay was in the reasonable control of
10 the movant". See Lehman, 433 B.R. 119-20.

11 The Second Circuit has noted that "The equities will
12 rarely, if ever, favor a party who fails to follow the clear
13 dictates of a court rule" and that "[w]here the rule is
14 entirely clear, we continue to expect that a party claiming
15 excusable neglect will, in the ordinary course, lose under the
16 Pioneer test." See In re BHS&B Holdings LLC, 453 B.R. 153 at
17 163 (Bankr. S.D.N.Y. 2010). Instead, "[o]nly in unusual
18 circumstances where ignorance of the rules or mistakes
19 construing the rules constitute excusable neglect". That's
20 BHS&B at page 168.

21 Additionally, the Second Circuit has held in a case
22 that I referred to earlier, In re Medaglia, 52 F.3d 451 at 455
23 (2nd Cir. 1995), that actual knowledge of a bankruptcy
24 proceeding is an adequate substitute for formal notice of the
25 bar date even where the creditor was not scheduled by the

1 debtor. Here, it's acknowledged that the creditor was well
2 aware of the bankruptcy proceeding. Counsel has referred to
3 "the impression" of MED&G's state court counsel that they
4 didn't have to file a proof of claim. To me, that establishes
5 knowledge that, one, you do have to file proofs of claim in
6 bankruptcy cases and they certainly had not pointed to
7 anything, any representation, statement, writing by the debtor
8 that would excuse MED&G from filing a timely proof of claim.

9 Under the circumstances, the Court concludes that the
10 moving party has failed to establish cause as required under
11 the Pioneer test and its progeny for permission to file a late
12 claim.

13 With respect to the lift stay, which is not on for
14 today, Mr. Rosenbaum, when is that on for?

15 MR. ROSENBAUM: Your Honor, it's on for May 14th
16 but --

17 THE COURT: What I would encourage you to do -- what
18 you've indicated is the debtor doesn't object to lifting the
19 stay to permit the matter to go forward in respect to the
20 equitable relief. I would urge you to see if you can reach a
21 stipulation with counsel for MED&G, submit it to chambers -- if
22 you can agree on it, submit it to chambers and I'll approve it
23 if it's consistent with what has happened in other similar
24 kinds of proceedings that'll make it unnecessary to go forward
25 with the motion to lift the stay.

1 MR. ROSENBAUM: Your Honor, Mr. Newton just informed
2 me we actually did stipulate to that on the --

3 THE COURT: Okay. And did I approve it?

4 MR. ROSENBAUM: Yes, you did, Your Honor.

5 THE COURT: There's so much paper that comes through.
6 I apologize if I can't keep --

7 MR. ROSENBAUM: I apologize for not raising it
8 earlier.

9 THE COURT: Okay. All right.

10 MR. ROSENBAUM: But we've already stipulated to that.

11 THE COURT: So that's resolved then.

12 MR. ROSENBAUM: Yes, Your Honor.

13 THE COURT: Okay. So that's going to be the Court's
14 ruling. Mr. Rosenbaum, please submit an order that for the
15 reasons stated by the Court, the motion to file a late claim is
16 denied.

17 MR. ROSENBAUM: Thank you, Your Honor. Will do so.

18 THE COURT: Thank you.

19 MR. BANEY: Thank you, Your Honor.

20 MR. ROSENBAUM: I'm looking around but I think that
21 concludes the docket for this morning.

22 THE COURT: All right. Anybody else have anything
23 they want to raise today? All right. We're adjourned. Thank
24 you very much.

25 MR. ROSENBAUM: Thank you, Your Honor.

RESIDENTIAL CAPITAL, LLC, et al.

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1 (Whereupon these proceedings were concluded at 10:47 AM)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Hudson Cook's first interim fee application	15	22
subject to adjustments agreed upon with the		
Office of the United States Trustee		
Motion of Shane Haffey for enforcement of the	18	3
automatic stay against the debtors granted in		
part and denied in part to permit two appeals		
pending in Sixth Circuit to proceed		
Motion for stay relief filed by Mr. and Mrs.	20	19
Kinworthy granted		
For reasons stated on the record by the	38	16
Court, motion of MED&G Group LP to file a		
Late proof of claim denied		

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.



LISA BAR-LEIB (CET**D 486)
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Date: May 1, 2013